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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5817 OF 2005

M/s. Polymers Industries ... Petitioner

V/s

Employees State Insurance Corporation ... Respondent

Mr. J.K. Desai i/by Mr. K.S. Bapat for the petitioner.

Mr. H.V. Mehta for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 30TH JULY, 2007.

P.C.:

1. The petition challenges the order of the E.S.I. Court dated 1.4.2005. The E.S.I. Court has dismissed the application filed by the petitioner for condoning the delay in filing the Misc. (ESI) Application No. 3 of 2001.

2. A show cause notice was issued to the petitioner on 15.7.1992 calling upon the petitioner to pay E.S.I. dues of the employees working with the petitioner. Instead of replying to the show cause notice, the petitioner filed Misc. (ESI) Application No. 10 of 1996. This application was dismissed for default on

22.6.2001. On learning about the dismissal of the application, the petitioner filed Misc. (ESI) Application No. 3 of 2001 for restoration. An application for condoning the delay was also filed.

3. The respondent contested the application for condoning the delay by filing its reply. Misc. (ESI) Application No. 3 of 2001 was dismissed on 14.7.2003 for non-prosecution as nobody was present for the petitioner. The petitioner filed another application being Misc. (ESI) Application No. 1 of 2004 for recalling the order of dismissal. That application was allowed on 3.9.2004 by the E.S.I. Court. The application for condoning the delay in filing Misc. (ESI) Application No. 3 of 2001 was heard on merits. Evidence was led by the parties and the E.S.I. Court dismissed the application. The E.S.I. Court held that the petitioner has not shown sufficient grounds for restoring the application. Apart from this, it was held that the limitation of 60 days' prescribed under the E.S.I. Act was not complied with and, therefore, the delay could not be condoned. The application was filed on 21.9.2001 although the order dismissing the Misc. (ESI) Application No. 10 of 1996 was passed on 22.6.2001. Thus, there was a delay of 21 days'.

4. The petitioner had submitted that the proprietor of the petitioner was unwell and he was advised bed rest between the period 13.3.2001 to 18.3.2001 and 20.6.2001 to 23.6.2001; he was therefore unable to attend the Court. This reason has been accepted by the E.S.I. Court for restoring the Misc. (ESI) Application No. 3 of 2001. However, this reason was not found sufficient by the E.S.I. Court to condone the delay in filing the miscellaneous application. The reasoning of the E.S.I. Court is incorrect. If the ill health of the proprietor was found to be a satisfactory reason to restore the miscellaneous application, it would surely be a sufficient cause for condoning the delay in filing the miscellaneous application.

5. In my view, the order in the miscellaneous application must be set aside and the Misc. (ESI) Application No. 10 of 1996 must be restored to file. However, this application has been filed against the issuance of the show cause notice. The petitioner ought to have replied to the show cause notice and in the event the order passed by the E.S.I. Corporation was against the petitioner, it could have challenged the same by filing an application before the E.S.I. Court under Section 75 of the E.S.I. Act.

6. The impugned orders are set aside.

7. In the interest of justice, the petitioner is permitted to approach the E.S.I. Corporation by replying to the show cause notice conditional upon paying Rs.500/- as costs precedent. The Corporation shall give the petitioner a hearing and pass appropriate orders.

7. The petitioner to appear before the E.S.I. Corporation on 21.8.2007 and file its reply to the show cause notice dated 15.7.1992.

8. The petition is disposed of accordingly.

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